

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MIGUEL LUJAN,

Plaintiff,
v. 1:15-cv-00093-KG-LF

CITY OF ESPAÑOLA, ESPAÑOLA POLICE
DEPARTMENT, OFFICER LUGINBUHI,
and OFFICER MARTINEZ,

Defendants.

ORDER TO FILE A MARTINEZ REPORT

This matter comes before the Court *sua sponte*. In his complaint, plaintiff Miguel Lujan, a *pro se* prisoner, alleges that defendants violated his constitutional rights on April 3, 2014, when defendant Officers Luginbuhi (sic.) and Martinez tazed him without justification. Doc. 1 at 3. Plaintiff alleges that the officers continued tazing him after he was handcuffed, causing his heart to stop. *Id.* at 4. Plaintiff further complains that the officers failed to follow proper procedures and policies set by the City of Española. *Id.* at 5.

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order defendants to investigate the incident or incidents underlying plaintiff's lawsuit and submit a report of their investigation in order to develop a factual or legal basis for determining whether plaintiff has a meritorious claim. *See, e.g., Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987). A *Martinez* Report may be used in a variety of contexts, including motions for summary judgment or a *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set out in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

IT IS THEREFORE ORDERED that defendants file a *Martinez* Report (with or without a dispositive motion) within 60 days of receipt of this order in accordance with the instructions below:

1. Defendants' comprehensive *Martinez* Report shall address all of plaintiff's allegations as well as any defenses defendants wish to pursue. Defendants also shall:
 - a. Set forth the facts needed to resolve the outstanding claims, including:
 - i. the names of all persons who dealt directly with plaintiff with regard to the claims that are the subject of his complaint;
 - ii. a description of all records or documents whose contents pertain to the claims that are the subject of his complaint;
 - iii. copies of all complaints plaintiff has filed with defendants about the April 3, 2014 incident;
 - iv. copies of all medical records pertaining to plaintiff's medical care following the alleged incident.
 - b. Provide copies of all records and documents pertaining to the matters referred to in the above sub-paragraph a, including any video or audio recordings of the incident;
 - c. Provide affidavits in support of the Report, if necessary.
2. The defendants may submit records and documents simultaneously with the Report, but the Court will not consider the submission of documents alone, or documents submitted with an index but without an accompanying Report to comply with this order.
3. The defendants must submit an index of all records and documents with the Report.

The index must identify each record and document submitted, by number, and each record and document must be marked with a tab or label showing its number.

Additionally, the Report and each record and document submitted with the Report must be paginated consecutively using Bates numbers or a similar numbering system.

4. The defendants must file a complete copy of the Report with the Court and also serve a copy on plaintiff.
5. The Court is aware that materials contained in corrections and law enforcement files may be sensitive, and that there may be valid reasons for keeping such information secret. Consequently, defendants may request that plaintiff not be permitted to review certain portions of the Report and its attachments. If so, defendants must identify those portions of the Report and attachments that they wish to redact from plaintiff's copy, and explain to the Court their reasons for the proposed redactions fourteen (14) days before the Report is due. Defendants must submit the entire Report, along with the proposed redactions and reasons, all under seal, to the Court for ruling.
6. Defendants shall file and serve the Report and any dispositive motions on or before **November 30, 2015.**
7. Plaintiff shall file his response to the Report and his response to any dispositive motions on or before **December 30, 2015.**
8. Defendants shall file and serve their replies, if any, to plaintiff's response on or before **January 19, 2016.**

Laura Fashing
United States Magistrate Judge